IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.1141 OF 2005
IN
SUMMONS FOR JUDGMENT NO.654 OF 2004
IN
SUMMARY SUIT NO.1892 OF 2004

S.J. Motishaw .... Appellant
Vs.
Smt. Monica M. Patel .... Respondent

Shri R.V. Govilkar for the Appellant.

Shri Jose George for the Respondent.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATED: APRIL 19, 2007

P.C:

Taken on board on request.

2. Heard the learned Advocates for the parties. The appellant challenges the order dated 27-9-2005 passed in Summons for Judgment No.654 of 2004 in Summary Suit No.1892 of 2004. By the impugned order, the learned single Judge has granted unconditional leave to the respondent/defendant to defend the suit. The preliminary objection which is sought to be raised on behalf of the respondent is that by the impugned order the learned single Judge having granted leave unconditionally to defend the summary suit, no appeal is maintainable against such an order and in that regard,

reliance is sought to be placed in the decision of the Division Bench in the matter of **Harilal Ramji Doshi v. Manilal Sunderji Doshi,** reported in 1986 Vol.87 B.L.R. 707.

3. It was held in **Harilal Doshi's** case (supra) that an order which vitally affects a valuable right of a party will undoubtedly be treated as a 'judgment' within the meaning of the Letters Patent so as to be appealable to a larger Bench. But where a single Judge of a chartered High Court in a summary suit allows the defendant to defend the suit, the plaintiff though adversely affected, the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit and such an order would not amount to a judgment within the meaning of Clause 15 of the Letters Patent and, therefore, would not be subject to appeal.

4. Plain reading of the provisions of Order 37 of the C.P.C. also would disclose that in case of an order granting leave to defend a suit unconditionally, the Court does not adjudicate upon any of the rights of the parties and no issue between the parties is decided while granting such leave. It merely ensures the defendants to contest the proceedings in accordance with

the procedure laid down under the C.P.C.. Being so, by no stretch of imagination, such an order can be said to be either a judgment or an order deciding the rights of the parties which is a prerequisite for the Appellate Court to interfere in the order of the Court of Original Jurisdiction. Being so, and considering the law being already laid down by the Division Bench of this Court on the point in issue, no case is made out for interference in the impugned order. The appeal fails and is hereby rejected.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

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